

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS CICHETI

Plaintiff,

v.

07 CIV 10546
REPLY AFFIRMATION

ERNEST D. DAVIS, INDIVIDUALLY, AND IN HIS
CAPACITY AS MAYOR OF THE CITY
OF MOUNT VERNON, NEW YORK,

Defendant.

HINA SHERWANI, an attorney, duly admitted to practice law before the Courts of the State of New York, hereby affirms under the penalty of perjury as follows:

1. I make this reply affirmation in response to plaintiff's affirmation in opposition.
 2. A Statement of Facts is submitted herewith.
 3. I apologize to the Court for not initially submitting a Rule 56.1 Statement of Facts, however, I was under the impression that plaintiff was withdrawing this action when he failed to file an amended complaint adding defendants to this matter, **prior** to January 18, 2008, as directed by Your Honor and as indicated by plaintiff at the pre-motion conference.
 4. Plaintiff filed his First Amended Complaint on January 28, 2008.
- Defendant respectfully requests that the First Amended Complaint be dismissed by the Court and will submit an affirmation relating to the first amended complaint within the time period allowed to answer said complaint.

5. Addressing plaintiff's opposition papers, there are no §1983 or any other viable federal claims as plaintiff, within six weeks of being terminated was rehired as Water Department Superintendent and continues to work for the City.

6. Opposing counsel's hubristic dialogue regarding firefighting is unnecessary. Plaintiff has never been a firefighter nor has any knowledge or expertise in fighting fires.

7. The position is purely a politically appointed position that serves at the pleasure of the Mayor. See Mount Vernon City Charter for description of policy making position.

8. As such, neither the fire commissioner's political associations nor his political speech are protected.

WHEREFORE, your affirmant respectfully requests an Order of this Court granting dismissing plaintiff's complaint, together with such other and further relief as this Court deems just and proper.

Dated: Mount Vernon, New York
February 8, 2008



HINA SHERWANI (HS 8283)
ASSISTANT CORPORATION COUNSEL